

Alaska Department of Natural Resources
Division of Mining, Land and Water

Preliminary Finding and Decision
ADL 231234

Land Exchange Agreement between the Matanuska Susitna Borough and State of Alaska
Pursuant to AS 29.65.090 (ADL 231234 and MSB 006645)

Related Actions: Amendment to the Hatcher Pass Management Plan AS 38.04.065
Reclassification of Land (LCO SC-09-003A01) AS 38.05.300

Proposed Action

A Land Exchange between the Matanuska-Susitna Borough (Borough) and the State of Alaska (State) acting through its Division of Mining, Land and Water of the Department of Natural Resources (DNR). The lands involved in this exchange are located within the Government Peak Management Unit of the 2010 Hatcher Pass Management Plan area and are depicted on the attached map entitled: “Hatcher Pass: Government Peak and Bald Mountain/Hillside Unit Plan Boundary Adjustment and Lands for Municipal Exchange”¹. The land exchange includes approximately 443 acres of borough owned land and 720 acres of state owned land. The estimated rounded value of the state owned land is \$ 1,116,000. The estimated rounded value of the borough owned land is \$ 1,107,000. The requirement of statute is that the exchange be ‘of approximately equal value’.

Related Actions

This land exchange will also entail an amendment to the Hatcher Pass Management Plan (HPMP) involving the movement of the boundary between the Bald Mountain/Hillside and Government Peak Management Units which will result in changes to land use designations in the HPMP and land classifications within the area west of Government Creek. These changes are identified in the proposed Plan Amendment and proposed Land Classification Order, which are attached for information purposes. It should be noted that the land exchange, plan amendment, and classification change are all separate, but interrelated, actions.

Purpose

The purpose of this exchange is to enable the Borough to utilize state land that is better suited for community and economic development needs related to the development of ski facilities as described in the Matsu Borough “Asset Management Plan” and provide for more effective management of the land west of Government Creek on what is now borough property.

¹ The map entitled “Hatcher Pass: Government Peak and Bald Mountain / Hillside Unit Plan Boundary Adjustment Lands for Municipal Exchange” serves as a reference for all three proposed actions and will be referenced throughout this document as “the attached map”.

In this instance, the land exchange will facilitate the development of Alpine ski facilities and simplify land management in both the Government Peak and Bald Mountain/Hillside units for the state and borough. The borough owns nearly one third of the land within the Government Peak management unit, which is concentrated in the southern area of that unit. The land selected for the proposed Alpine Ski Facility is leased from the state by the borough. This exchange would transfer ownership of the land proposed for an Alpine Ski facility to the borough.

The borough owned land in the southwest section of the unit is separated by the Government Creek. The exchange would transfer land west of the Government Creek to the state, which would provide a clear geographic boundary between state and borough land. The exchanged land would be included in the Bald Mountain/Hillside management unit.

Authority

This land exchange is pursuant to Alaska Statute 29.65.090, which authorizes the state and a municipality, in this case a borough, to exchange land or interests in land when it is in the overall public interest pursuant to AS 29.65.100. This decision is conducted under the authority of AS 38.05.035(e).

Administrative Record

Relevant Department of Natural Resources case files include ADL 231234 and the Hatcher Pass Management Plan (2010).

Scope of the Decision

The scope of this decision is limited to the exchange of lands between the borough and the state as described in this document.

Description

Location:

- **Geographic:** The lands proposed for exchange are located within the Government Peak Management Unit of the Hatcher Pass Management Plan, north of Palmer, Alaska. The land is situated on the slopes of Government Peak and bounded on the east by Hatcher Pass Road and borders the Government Creek on the west. (Note: Hatcher Pass Road is the locally accepted name, however it is legally named the Palmer-Fishhook Road on the East Side of the Hatcher Pass Management Plan area.
- **Borough/Municipality:** Matanuska-Susitna Borough
- **Native Regional Corporation:** Cook Inlet Regional Corporation.

- Native Village Corporation: None
- USGS Topographic Map: Anchorage C-6;C-7;D-6;D-7 (1:63,360)
- Hatcher Pass Management Plan (2010) Map 3-11

Legal Description:

The following are the legal descriptions for the lands proposed for exchange. These legal descriptions are based on the aforementioned map entitled title “Hatcher Pass: Government Peak and Bald Mountain/Hillside Unit Plan Boundary Adjustment and Lands for Municipal Exchange” dated August 22, 2011. In the case of a discrepancy between the map and the following legal descriptions, the map shall control.

All the parcels are located in Township 19N North, Range 1 East, Seward Meridian.

Borough Parcels:

Parcel A

Section 10; NW1/2 NE1/4. Containing 20 acres, more or less.

Parcel B

Section 15; W1/2 SE1/4, S1/2 SW1/4 NE1/4, S1/2 N1/2 SW1/4 NE1/4. Containing 110 acres, more or less.

Parcel C

Section 21; NW1/4 SW1/4. Containing 40 acres, more or less.

Parcel D

Section 29; All west of the OHW of Government Creek.
Containing 273 acres, more or less.

State Parcels:

Parcel E

Section 9; S1/2 NE1/4, S1/2 N1/2 NE1/4, SE1/4.
Section 10; S1/2 NW1/4, S1/2 N1/2 NW1/4, SW1/4.
Section 15; N1/2 NW1/4.
Section 16; N1/2 NW1/4.
Containing 720 acres, more or less.

Title:

State land acquired under General Grant Statehood Entitlement Act of July 7, 1958, Stat. 339, as amended. State Land: Patent No. 50-87-0076 (GS 1222). Affected by Third Party Interests, Development Lease ADL 225965

Borough land acquired through Municipal Entitlement AS 29.65 and SLA 99 Chapter 92. Borough Land: No patent has been issued; however, the municipal entitlement decision (ADL 227511) determined that the requirements of AS 29.65.070(b) were met, which established equitable title (with the borough). This same statute grants authority to the Matanuska Susitna Borough over conditional leases and sales, and their authority has been authorized by the DNR. Affected by Third Party Interests, Development Lease ADL 225965.

Background:

The Hatcher Pass Management Plan was revised in 2010. In that revision, management unit boundaries were realigned, in part, to coincide with topographical features. The Government Peak Management Unit (unit) was realigned somewhat differently, because it was modified according to land ownership boundaries on the western border, where borough land is bisected by the Government Creek. The unit was also added to the Hatcher Pass Special Use Area and will be closed to recreational motorized use through regulation 11 AAC 96.014. The land within the management unit was reclassified as Public Recreation (LCO SC-09-003) and designated Public Recreation Developed and Public Recreation Dispersed in the management plan.

Development of ski facilities at Hatcher Pass is an idea that has been around for 25 years. The first lease application for development of a ski resort near Government Peak was filed in 1972. Several winter-sports related projects of varying scope have been proposed over the years and, while none have been completed, interest remains high. The first Hatcher Pass Management Plan was adopted in 1986, which designated certain lands within the Government Peak management unit for development. That plan was amended in 1989 primarily to address the development of the Government Peak management unit. At that time, a large Alpine Ski resort was proposed and several private developers showed interest, although no construction occurred.

In 2001, a significant amount of land was conveyed to the borough as part of their Municipal Entitlement. The borough intended to take responsibility for the development of ski facilities and assumed the development lease (ADL 225965). The public and special interest groups raised objections to the land being transferred to borough ownership and an appeal of the decision were filed in state court. The process resulted in a legal settlement between the Cascadia Wildlands Project, State Department of Natural Resources, Division of Mining, Land and Water and the Matanuska-Susitna Borough in 2003 (Case No. 3AN-02-4403), which required the borough to manage the land according to the Hatcher Pass Management Plan and any subsequent amendments to that plan.

The borough currently owns nearly one third of the land within the unit and holds a development lease for the remaining land (ADL 225965), upon which they plan to develop two ski facilities; a Nordic ski facility in the southern area of the unit and an Alpine facility in the northern area of

the unit. These areas are identified in the HPMP as the ‘Northern Development Area (Alpine)’ and the ‘Southern Development Area (Nordic)’. Initial planning and design for the Nordic area began in 2005. However, the borough assembly required that an Environmental Impact Analysis be completed prior to construction because federal funding was involved and there had been some questions about the physical land suitability for certain types of uses. It was completed in December, 2010 and the Record of Decision was issued in January, 2011. Plans for the Nordic facility and related trails have been developed or are being developed and the proposed development area ends at the Government Creek.

After the revision to Hatcher Pass Management Plan in 2010, the borough approached the state and proposed a change to the southwestern boundary of the Government Peak management unit along the Government Creek to clarify land management, and motorized recreational use areas, and to enable them to obtain more land near the proposed location of the Alpine ski facilities, to consolidate land ownership and management.

Although initially considered for possible development as part of the proposed Nordic ski facility, the borough no longer intends to develop west of Government Creek, in part due to concerns about the potential for motorized and non-motorized recreational use conflict occurring in this area. Motorized use now, both for winter snowmachine use and fall ORV use for hunting, is almost certainly going to continue in this area, and enforcement of the current non-motorized restriction affecting this area would be difficult and not make a lot of sense given the established motorized use patterns. The state land west of the creek (and west of the borough land adjoining Government Creek) is included in the southeastern area of the Bald Mountain/Hillside Unit, which is open to motorized recreation. Through the Plan Amendment, the land west of Government Creek will become part of the Bald Mountain/Hillside management unit and will be managed according to the management intent of this management unit, which provides for multiple use, both motorized and non-motorized, and which is consistent with the current pattern of uses within that area.

Planning, Classification, and Mineral Orders

Planning

Hatcher Pass Management Plan Revision (2010)

The land proposed for this land exchange is located within the Government Peak Unit of the 2010 Hatcher Pass Management Plan. The HPMP designates both the Northern Development Area and Southern Development Area as Public Recreation – Developed. The remainder of the unit is designated as Public Recreation – Dispersed. The HPMP provides for the development of Alpine ski facilities in the northern area and for Nordic ski facilities in the southern area.

This area was included in the original (1986) Hatcher Pass Management Plan and was the focus of the 1989 Hatcher Pass Management Plan Amendment, which concentrated on the development of an Alpine Ski Facility within that management unit. The Government Peak area was closed to motorized use under the provisions of 11 AAC 12; this area is to remain closed to

motorized use under proposed regulations (11 AAC 96.014) that are in the process of administrative review and will ultimately become approved through a separate process.

The Hatcher Pass Management Plan requires a plan amendment if uses within the Government Peak Unit are to be restricted and/or if expanded in scope or intensity. In this instance, land would be open to motorized recreation that is now closed to such use in the area west of Government Creek. The southeast boundary of the Bald Mountain/Hillside Unit would be shifted east to the Government Creek and would increase the size of that unit. (The attached map depicts the affected area.) The effect of this action would be to open this area to motorized recreational use. The boundaries of 'Non-Motorized – Year' area in the HPMP would be reconfigured to reflect this change. The draft regulations under 11 AAC 96.014 would also need to be reconfigured to reflect this management unit boundary change, and the draft regulations will be revised to reflect this boundary adjustment if approved. A related aspect of this plan boundary shift in the area west of Government Creek, would be to change the plan designation from Public Recreation – Developed to a co-designation of Public Recreation – Dispersed and Habitat. All land to be exchanged is subject to the requirements of the Hatcher Pass Management Plan and any amendments to that plan.

Land Classification

Currently, the land use classification of the Government Peak unit is Public Recreation, while that of the Bald Mountain/Hillside unit is a co-classification of Public Recreation and Wildlife Habitat. Assuming approval of the plan amendment and land classification order, the land west of Government Creek would be included in the Bald Mountain/Hillside Unit and reclassified Public Recreation and Wildlife habitat. The classification of Public Recreation in the Government Peak management unit would remain unchanged, as Public Recreation.

Mineral Orders

All land involved in this proposed land exchange have been closed to mineral entry. Three Mineral Closing Orders were issued for the Government Peak Management Unit in relation to the development of a ski resort since 1986: MCO 499, MCO 541, and MCO 549. MCO 499 is located in the northeastern area of the Government Peak management unit and encompasses nearly all of the state land surrounding the Northern Development Area for the Alpine Ski Facilities. MCO 541 abuts MCO 499 from the west and includes the remaining state land for exchange. MCO 549 encircles both closures and includes the borough land that is proposed for this land exchange located west of Government Creek.

Local Planning

The area proposed for exchange is located within an organized borough. The borough, as a result of settlement litigation, must adhere to the state's HPMP. The HPMP constitutes the comprehensive plan for the borough owned land in the Government Peak unit. If the land exchange is approved, the terms of the settlement agreement will also apply to this newly acquired area of borough land and all borough actions must conform to the 2010 HPMP approved by the state. (It is also intended that the borough will approve the 2010 HPMP in late 2011.) The 2010 HPMP required the development of a local prepared and approved step-down

plan to cover the area of proposed facility development in the Northern and Southern Development Areas. This plan has been prepared in draft form by the borough and is in the process of review for adoption. When adopted by the borough and approved by DNR as consistent with the requirements of the 2010 HPMP, it will form the basis for land and resource management in the Government Peak area for the area encompassed by the borough's Development and Asset Management Plan.

Traditional Use Finding

A Traditional Use Finding is not required; the parcels are within an organized borough, the Matanuska-Susitna Borough.

Access, including Access to Navigable and Public Water (Includes access to and beyond the parcel and access for public and navigable waters)

Access to these lands is provided via section line easements, the Government Peak Recreational Trail, and the Hatcher Pass Road. Additional access roads are being constructed by the borough to provide access to the proposed ski facilities.

Government Creek is a public waterbody. This land exchange would place the land west of the creek on state land. The requirements of AS 38.05.127 only apply if land is conveyed out of state ownership and the effect of this action would be to acquire title to land formerly in borough ownership. This requirement may also apply to leases, however the state is not required to impose 38.05.127 buffers on state owned land and therefore no .127 easement is required.

Reservation of Mineral Estate

The lands involved in this exchange have been closed to mineral entry. In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the state, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

Hazardous Materials and Potential Contaminants

No hazardous material or contamination from hazardous material is known to exist on the land. As part of the Environmental Impact Statement² process referenced earlier, a Preliminary Assessment for the Project Area was conducted to determine whether there are areas within the

² Final Environmental Impact Statement: Hatcher Pass Recreational Area Access, Trails, and Transit Facilities. November 2010. United States Department of Transportation, Federal Transit Administration.

project limits that may pose a threat to the environment for human health and therefore require further investigation. A search of the ADEC contaminated sites database revealed no active or inactive sites. The nearest active site is approximately three miles north of the Northern Development Area. The nearest non-active site is situated two miles south of the Southern Development Area.

Survey

Surveys are not required as part of this exchange as both parties anticipate using a Quit Claim Deed, which entail a legal description with an aliquot part description. In the event that parcels within this exchange do require a survey, the costs for those surveys will be the responsibility of the owner of the newly acquired land.

Compensation/Appraisal

Land exchanges involving the state and municipalities follow the requirements of AS 29.65.090. Under this statute, DNR can exchange land with municipalities (which includes boroughs), when it is in the ‘public interest’ but such exchanges “must be of approximately equal value, including nonmonetary value of public benefits.” The Borough and DNR agreed on a financial valuation method that related typical per unit costs for lands of certain types to the borough and state land that corresponded to these types. The purpose of this assessment was to establish estimates of value based on the use of comparable values appropriate to specific parcels of land. While this method is not an appraisal of value, it is sufficient to establish the relative value of parcels such that the requirement of ‘approximately equal value’ under statute can be reasonably met. The value of the state parcel in this exchange (Parcel E) is estimated to be \$1,116,000. The value of the borough parcels in this exchange (Parcels A, B, C, and D) are estimated to be 1,107,000. The attached map depicts the location of these parcels. DNR also determined that this land exchange would benefit the overall public interest.

Discussion and Alternatives

There are two alternative courses of action: either to maintain the current management unit boundaries and land ownership (termed ‘status quo’), or to realign the management unit boundaries and exchange land that is pertinent to the borough’s development of a ski facility (termed ‘approve the land exchange’).

1. Maintain the status quo. This alternative does not provide any clear advantage for the state or the borough. There would still be dual ownership of the land slated for the development of Alpine ski facilities and the Development Lease³ will need to be extended in perpetuity. The enforcement of motorized recreational use restrictions would still be extremely difficult. Although the borough owned land west of Government Creek

³ The Development Lease (ADL 225965) affects the entirety of Government Peak; this lease allows the borough to make management decisions on state land that are related to the development of Alpine ski facilities.

is closed to motorized recreation, there have been frequent incursions into the area since the state land in the adjoining Bald Mountain/Hillside management unit is open to such use and there is no clear geographical or physical boundary between the use areas.

2. Approve the land exchange. Approval of the land exchange would foster the development of the ski facilities, which would serve to support local community economic growth. Transferring ownership of land within the area slated for the Alpine ski facility to the borough would result in that area being entirely borough owned which would simplify land management and development.

Additionally, recreational management would be simplified for both the state and borough, as the Government Creek is a visible, on-the -ground feature. The boundary between the Government Peak and Bald Mountain/Hillside management units would be entirely along topographical lines, rather than section and property lines. The delineation would provide more visual clarity for the public to discern the areas where motorized recreation is allowed and thereby contribute to adherence to regulatory constraints under 11 AAC 96.014 to motorized use. This area has also been traditionally used for both fall hunting using ORV and during the winter, by snowmachines. Changing management unit boundaries would therefore conform to established motorized/non-motorized use patterns. The land west of the creek would become state owned and part of the Bald Mountain/Hillside management unit and which is open to motorized recreational use. The land east of the creek would remain borough owned and closed to such use.

Recommendation and Preliminary Decision

The preferred alternative is to approve the land exchange between the state and borough as described under ‘Discussion and Alternatives’. The proposed approval is subject to:

1. Section Line Easements
2. The Development Lease between the borough and the state.
3. The Hatcher Pass Management Plan and any amendments to that plan.

The preliminary decision described above, as represented by the preferred alternative, has been reviewed and considered. Transfer of the land will ensure adequate protection of the land’s scenic, recreational, and wildlife values and is subject to the stipulations identified in the recommendations section and to all current, valid third party interests.

I find it is in the best interest of the state to proceed to the public notice and review and if found appropriate, to execute the exchange as described herein.

This is a preliminary decision (of a land exchange) and subsequent review may result in changes to the preferred alternative or disapproval of the proposed action altogether.

Bruce Phelps
Chief, Resource Assessment and Development Section

11/21/2011
Date

Public Notice, Decision, and Appeal Procedures

A public notice, announcing the Preliminary Decision for this Land Exchange and proposed amendment to the Hatcher Pass Management Plan (LCO SC11-001) and soliciting comments, will be published in the *Frontiersman* and the *Anchorage Daily News* per AS 38.05.945(b)(3). The Post Master in each of the following communities will be requested to post the public notice per AS 38.05.945(b)(3)(B): Anchorage, Palmer, Wasilla and Willow. Notice will be sent to the Matanuska-Susitna Borough, pursuant to AS 38.05.945(c)(1). Public notice on the Internet will be posted on the State's web page (<http://www.state.ak.us>) under *Online Public Notice*.

A copy of the Preliminary Finding for this Land Exchange, Proposed Plan Amendment and Land Classification Order are available on the internet at: <http://dnr.alaska.gov/mlw/planning> or from the Division of Mining, Land and Water, Resource Assessment and Development Section (RADS), 550 W 7th Avenue, Suite 1050, Anchorage, AK 99501-3579; telephone 1-907-269-8531; fax 1-907-269-8915; email Philana.Miles@dnr.state.ak.us.

Submit comments in writing to the: Division of Mining, Land and Water, Resource Assessment and Development Section, 550 W 7th Ave, Anchorage AK 99501, Fax (907)269-8915, or via email to: Philana.Miles@alaska.gov **OR** Matanuska-Susitna Borough, Community Development Department, 350 E. Dahlia Ave., Palmer, AK 99645, Fax (907) 745 -9635 or via email to: LMB@matsugov.us

Comments must be received **in writing, post marked or emailed by midnight on February 10, 2012** to ensure consideration. Following the comment deadline, all written responses will be considered and the decision may be modified to incorporate public comments. **Only persons who submit comments in writing during this public comment period will be eligible to file an administrative appeal of the Final Finding and Decision.** A copy of the final decision will be sent to any person who comments in writing on the preliminary decision, proposed plan amendment and/or the Land Classification Order. The final decision will include appeal instructions. In addition, the exchange must be approved by the Borough Assembly and Department of Natural Resources before it can be implemented.

The Department of Natural Resources is prepared to accommodate individuals with disabilities by providing auxiliary aids or services when requested. Individuals with audio impairments who wish to respond to this decision by telephone may call the department's Public Information Center in Anchorage between the hours of 11:00 a.m. and 5:00 p.m., M-F, at TDD# 1-907-269-8411.

The right is reserved to waive technical defects in this document.